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SENATE BILL 725

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Lidio G. Rainaldi

AN ACT

RELATING TO JURIES; CREATING THE LENGTHY TRIAL FUND; INCREASING  
JUROR COMPENSATION; EXPANDING EXEMPTIONS, ELIMINATING EXCUSES  
AND CHANGING POSTPONEMENTS; AMENDING AND ENACTING SECTIONS OF  
THE NMSA 1978; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 34-6-40 NMSA 1978 (being Laws 1968,  
Chapter 69, Section 42, as amended by Laws 2001, Chapter 277,  
Section 1 and by Laws 2001, Chapter 279, Section 1) is amended  
to read:

"34-6-40. FINANCE--FEES.--

A. District court clerks shall collect in civil  
matters docketing any cause, whether original or reopened or by  
appeal or transfer from any inferior court, a fee of ~~one~~  
~~hundred seven dollars (\$107)] one hundred twenty-seven dollars~~

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1 (\$127), ten dollars (\$10.00) of which shall be deposited in the  
2 court automation fund, [~~and~~] twenty-five dollars (\$25.00) of  
3 which shall be deposited in the civil legal services fund and  
4 twenty dollars (\$20.00) of which shall be deposited in the  
5 lengthy trial fund.

6 B. The following parties or civil matters are  
7 exempt from payment of the lengthy trial fund fee:

8 (1) actions by governmental agencies;

9 (2) pro se litigants;

10 (3) actions brought in forma pauperis;

11 (4) recoupment actions for government-backed  
12 educational loans or mortgages;

13 (5) cases seeking:

14 (a) social security disability  
15 determinations;

16 (b) individual veteran's compensation or  
17 disability determinations; or

18 (c) child custody or support;

19 (6) any other filings designated by supreme  
20 court rule that involve minimal use of court resources and that  
21 customarily are not afforded the opportunity for a trial by  
22 jury; and

23 (7) any other party or civil case exempted by  
24 law from payment of docket fees.

25 ~~[B.]~~ C. No fees or costs shall be taxed against the

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1 state, its political subdivisions or the nonprofit corporations  
2 authorized to be formed under the Educational Assistance Act.

3 [~~C-~~] D. Except as otherwise specifically provided  
4 by law, docket fees shall be paid into the general fund. "

5 Section 2. A new section of Chapter 38, Article 5 NMSA  
6 1978 is enacted to read:

7 "[NEW MATERIAL] LEGISLATIVE DECLARATION. --It is the policy  
8 of this state that all qualified citizens have an obligation to  
9 serve on juries when summoned by the courts of this state. "

10 Section 3. A new section of Chapter 38, Article 5 NMSA  
11 1978 is enacted to read:

12 "[NEW MATERIAL] POSTPONEMENT OF PETIT JURY SERVICE. --

13 A. A person scheduled to appear for service on a  
14 petit jury may request a postponement of the date of initial  
15 appearance for jury service. The request for postponement  
16 shall be granted if the juror:

17 (1) has not previously been granted a  
18 postponement; and

19 (2) agrees to a future date, approved by the  
20 court, when the juror will appear for jury service that is not  
21 more than six months after the date on which the prospective  
22 juror originally was called to serve.

23 B. A subsequent request to postpone jury service  
24 may be approved by the court only in the event of an extreme  
25 emergency that could not have been anticipated at the time the

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1 initial postponement was granted. Prior to the grant of a  
2 subsequent postponement, the prospective juror must agree to a  
3 future date on which the juror will appear for jury service  
4 within six months of the postponement.

5 C. A court shall postpone and reschedule the  
6 service of a summoned juror, without affecting the summoned  
7 juror's right to request a postponement under Subsections A and  
8 B of this section, if the summoned juror is:

9 (1) employed by an employer with five or fewer  
10 full-time employees, or their equivalent, and another employee  
11 of the same employer is summoned to appear during the same  
12 period; or

13 (2) the only person performing particular  
14 services for a business, commercial or agricultural enterprise  
15 and whose services are so essential to the operations of the  
16 business, commercial or agricultural enterprise that the  
17 enterprise must close or cease to function if the person is  
18 required to perform jury duty."

19 Section 4. A new section of Chapter 38, Article 5 NMSA  
20 1978 is enacted to read:

21 "[NEW MATERIAL] LENGTHY TRIAL FUND CREATED--PURPOSE--  
22 ADMINISTRATION. --

23 A. The "lengthy trial fund" is created in the state  
24 treasury to be administered by the administrative office of the  
25 courts. Interest earned on money in the fund shall be credited

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1 to the fund. Balances in the fund shall not revert at the end  
2 of any fiscal year.

3 B. All balances in the lengthy trial fund are  
4 appropriated to the administrative office of the courts for the  
5 purpose of providing full wage replacement or wage  
6 supplementation to jurors who serve as petit jurors for more  
7 than ten days.

8 C. Except as provided in Subsection D of this  
9 section, a "lengthy trial fund fee" of twenty dollars (\$20.00)  
10 shall be collected from each attorney who files a civil case in  
11 district court for deposit in the lengthy trial fund.

12 D. The following parties or civil matters are  
13 exempt from payment of the lengthy trial fund fee:

- 14 (1) actions by governmental agencies;
- 15 (2) pro se litigants;
- 16 (3) actions brought in forma pauperis;
- 17 (4) recoupment actions for government-backed  
18 educational loans or mortgages;
- 19 (5) cases seeking:
  - 20 (a) social security disability  
21 determinations;
  - 22 (b) individual veteran's compensation or  
23 disability determinations; or
  - 24 (c) child custody or support;
- 25 (6) any other filings designated by supreme

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1 court rule that involve minimal use of court resources and that  
2 customarily are not afforded the opportunity for a trial by  
3 jury; and

4 (7) any other party or civil case exempted by  
5 law from payment of docket fees.

6 E. Payments from the lengthy trial fund shall be  
7 made upon vouchers issued and signed by the director of the  
8 administrative office of the courts or the director's designee  
9 upon warrants drawn by the secretary of finance and  
10 administration. "

11 Section 5. Section 38-5-1 NMSA 1978 (being Laws  
12 1969, Chapter 222, Section 1, as amended) is amended to read:

13 "38-5-1. QUALIFICATION OF JURORS. -- ~~Any~~ A person who is  
14 at least eighteen years of age, a United States citizen, a  
15 resident of New Mexico residing in the county for which a jury  
16 may be convened and is not a convicted felon is eligible and  
17 may be summoned for service as a juror by the district courts  
18 and magistrate courts, unless the person is incapable of  
19 rendering jury service because of:

20 A. physical or mental illness or infirmity [~~to~~  
21 ~~render jury service~~]; or

22 B. undue or extreme physical or financial  
23 hardship. "

24 Section 6. Section 38-5-2 NMSA 1978 (being Laws 1973,  
25 Chapter 150, Section 1, as amended) is amended to read:

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1 "38-5-2. EXEMPTION FROM JURY SERVICE. --

2 [Persons] A. A person who [have] has served as  
3 [members] a member of a petit jury panel or a grand jury in  
4 either state or federal courts within the preceding thirty-six  
5 months shall be exempt from sitting or serving as [jurors] a  
6 juror in [any of the courts] a court of this state when [they,  
7 at their option request] the person requests to be [excused]  
8 exempted from service by reason of the exemption granted by  
9 this [section] subsection.

10 [Any other] B. A person may be [excused] exempted  
11 from jury service at the discretion of the judge [upon  
12 satisfactory evidence presented to the judge with or without  
13 the person's personal attendance upon the court. The judge, in  
14 his discretion, upon granting any excuse, may disallow the fees  
15 and mileage of the person excused] of the court for which the  
16 jury has been called for a period of up to twenty-four months  
17 if:

18 (1) the person has a mental or physical  
19 condition that causes the person to be incapable of performing  
20 jury service and the person has provided the court with a  
21 certification from a licensed physician verifying that a mental  
22 or physical condition renders the person unfit for jury  
23 service; or

24 (2) jury service would cause undue or extreme  
25 physical or financial hardship to the prospective juror or to a

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1 person under the prospective juror's care or supervision.

2 C. As used in this section, "undue or extreme  
3 physical or financial hardship":

4 (1) means circumstances in which a person  
5 would:

6 (a) be required to abandon another  
7 person under the person's care or supervision due to the  
8 extreme difficulty of obtaining an appropriate substitute  
9 caregiver during the period of jury service;

10 (b) incur costs that would have a  
11 substantial adverse impact on the payment of necessary daily  
12 living expenses of the person or the person's dependent; or

13 (c) suffer physical hardship that would  
14 result in illness or disease; and

15 (2) does not exist solely because a  
16 prospective juror will be absent from employment.

17 D. A person requesting an exemption from jury  
18 service based on undue or extreme physical or financial  
19 hardship shall provide documentation to support the request,  
20 such as income tax returns, medical statements or proof of  
21 guardianship or dependency. Failure to provide documents as  
22 required by the judge shall result in a denial of the request  
23 for an exemption.

24 E. A person requesting an exemption from jury  
25 service shall take all necessary action to obtain a ruling on

1 the request no later than the date on which the person is  
2 scheduled to appear for jury duty.

3 F. The service upon ~~[any]~~ a jury of ~~[any]~~ a person  
4 disqualified shall, of itself, not vitiate any indictment found  
5 or any verdict rendered by that jury, unless actual injury to  
6 the person complaining of the injury is shown. "

7 Section 7. Section 38-5-11 NMSA 1978 (being Laws 1969,  
8 Chapter 222, Section 11, as amended) is amended to read:

9 "38-5-11. QUALIFYING JURY PANELS. --

10 A. The court shall empanel jurors in a random  
11 manner. The district judge or ~~[his designee or magistrate or~~  
12 ~~his]~~ the magistrate judge or the judge's designee shall preside  
13 over the empaneling of a petit jury panel. The district judge  
14 or ~~[his]~~ the judge's designee shall preside over the empaneling  
15 of the grand jury panel. Jurors who appear for service shall  
16 be questioned under oath as to their eligibility for jury  
17 service by the district judge or ~~[his designee or magistrate or~~  
18 ~~his]~~ the magistrate judge or the judge's designee. Claims of  
19 exemption and requests for ~~[excuse from service or]~~  
20 postponement of ~~[services]~~ service shall be ruled upon by the  
21 district judge or ~~[his designee or magistrate or his]~~ the  
22 magistrate judge or the judge's designee.

23 ~~[B. A district judge or his designee or magistrate~~  
24 ~~or his designee may excuse, exclude or postpone the services of~~  
25 ~~any person called as a juror on the basis of:~~

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1                   (1) ~~physical or mental illness of the person~~  
2 ~~or within his immediate family;~~

3                   (2) ~~a written request from the person's~~  
4 ~~employer for excuse on the ground that his services are~~  
5 ~~essential; or~~

6                   (3) ~~the person's prior business, professional~~  
7 ~~or educational commitments which conflict with jury service,~~  
8 ~~proven to the satisfaction of the district judge or his~~  
9 ~~designee or magistrate or his designee.~~

10                C.] B. The district judge or [~~his designee or~~  
11 ~~magistrate or his~~] the magistrate judge or the judge's designee  
12 shall submit questionnaires to prospective jurors to obtain any  
13 information that will aid the court in ruling on requests for  
14 exemption [~~or excuse~~] from service or postponement of service  
15 or that will aid the court or parties in voir dire examination  
16 of jurors or in determining a juror's qualifications to serve  
17 on a particular petit jury panel, trial jury or grand jury.  
18 The district judge or [~~his designee or magistrate or his~~] the  
19 magistrate judge or the judge's designee shall certify a  
20 numbered list of the jury panel members' names when qualified.  
21 The certified list of jurors and the questionnaires obtained  
22 from jurors shall be made available for inspection and copying  
23 by [~~any~~] a party to [~~any~~] a pending proceeding or [~~their~~] any  
24 party's attorney or to [~~any~~] a person having good cause for  
25 access to the list and the questionnaires. "

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1 Section 8. Section 38-5-12 NMSA 1978 (being Laws 1969,  
2 Chapter 222, Section 12, as amended) is amended to read:

3 "38-5-12. PETIT JURY PANELS--NUMBER TO BE QUALIFIED--  
4 PERIOD OF SERVICE--~~[EXEMPTION]~~ TIME FOR SUMMONING.--The  
5 district judge shall determine the number of jurors to be  
6 summoned for service, the date and time for the appearance of  
7 jurors for qualification, the number of jurors to be qualified  
8 to provide panels of jurors for trial service and the size of  
9 trial jury panels ~~[and the length of time jurors are retained~~  
10 ~~for service]~~. Service of jurors shall be for no more than one  
11 court day in actual attendance, unless a juror is selected to  
12 serve in a trial or is under consideration to serve on a trial.

13 Procedures such as the use of alternate jury panels should be  
14 established where appropriate to lessen the burden of jury  
15 service on persons retained on petit jury panels. ~~[No person~~  
16 ~~may be required to remain as a member of a petit jury panel for~~  
17 ~~longer than six months following qualification as a juror in~~  
18 ~~any year and in any judicial district having a population of~~  
19 ~~more than three hundred thousand persons in the last federal~~  
20 ~~decennial census, no person may be required to remain as a~~  
21 ~~member of an actual jury panel for longer than six weeks in any~~  
22 ~~calendar year unless the panel is engaged in a trial, nor shall~~  
23 ~~he be required to remain as a member of a petit jury panel for~~  
24 ~~longer than three months following qualification as a juror in~~  
25 ~~any year. Persons who have served as members of a petit jury~~

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1 ~~panel or a grand jury in either state or federal courts within~~  
2 ~~the preceding thirty six months shall be exempt from sitting or~~  
3 ~~serving as jurors in any of the courts of this state when they,~~  
4 ~~at their option, request to be excused from service.]~~ Jurors  
5 may be drawn, summoned and qualified by the district judge at  
6 any time to supplement jury panels requiring replacement or  
7 augmentation. Petit jury panels may be qualified and may serve  
8 as the trial needs of the district court require without regard  
9 to court terms."

10 Section 9. Section 38-5-15 NMSA 1978 (being Laws 1969,  
11 Chapter 222, Section 15, as amended) is amended to read:

12 "38-5-15. MILEAGE AND COMPENSATION FOR JURORS- - LENGTHY  
13 TRIAL COMPENSATION. --

14 A. Persons summoned for jury service and jurors  
15 shall be reimbursed for travel from their place of actual  
16 residence to the courthouse when their attendance is ordered,  
17 at the rate allowed public officers and employees per mile of  
18 necessary travel. Persons summoned for jury service and jurors  
19 shall be compensated for their time in travel, attendance and  
20 service at the highest prevailing state minimum wage rate.

21 B. Only a juror who serves on a petit jury for more  
22 than ten days qualifies for payment from the lengthy trial fund  
23 as set forth in this section, if the jury service commenced on  
24 or after September 30, 2003. Payment shall be limited to the  
25 difference between the jury fee set forth in Subsection A of

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1 this section and the actual amount of wages a juror earns up to  
2 the maximum level payable and minus any amount the juror  
3 receives from an employer during the same time period.

4 C. The court may pay replacement or supplemental  
5 wages, from the lengthy trial fund, of up to three hundred  
6 dollars (\$300) per day per juror beginning on the eleventh day  
7 of jury service. In addition, if the court finds that lengthy  
8 jury service poses significant financial hardship for a juror,  
9 even in light of payments made after the tenth day of service,  
10 the court may award replacement or supplemental wages of up to  
11 one hundred dollars (\$100) per day from the fourth to the tenth  
12 day of jury service.

13 D. A juror may submit a request for payment from  
14 the lengthy trial fund on a form provided by the court. The  
15 request shall disclose the juror's regular wages, the amount  
16 the employer pays during the term of jury service starting on  
17 the eleventh day and thereafter, the amount of replacement or  
18 supplemental wages requested and any other information the  
19 court deems necessary.

20 E. Prior to payment from the lengthy trial fund, a  
21 juror shall submit documentation verifying the wage information  
22 provided to the court, including most recent earnings  
23 statements.

24 F. If a juror is self-employed or receives  
25 compensation other than wages, the juror may provide a sworn

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1 affidavit attesting to the juror's approximate income, together  
2 with other information or documentation as the court may  
3 require, to verify income."

4 Section 10. Section 38-5-18 NMSA 1978 (being Laws 1979,  
5 Chapter 47, Section 1) is amended to read:

6 "38-5-18. EMPLOYER PROHIBITED FROM PENALIZING EMPLOYEE  
7 FOR JURY SERVICE. --

8 A. An employer shall not deprive an employee of  
9 [his] employment or threaten or otherwise coerce [him with  
10 ~~respect thereto~~] an employee because the employee receives a  
11 summons for jury service, responds, [~~thereto~~] serves as a juror  
12 or attends court for prospective jury service.

13 B. An employer shall not require or request an  
14 employee to use annual, vacation or sick leave for time spent  
15 responding to a summons for jury service, participating in the  
16 jury selection process or serving on a jury. Nothing in this  
17 subsection requires an employer to provide annual, vacation or  
18 sick leave to employees who are not otherwise entitled to those  
19 benefits under company policies."

20 Section 11. EFFECTIVE DATE. --The effective date of the  
21 provisions of this act is September 1, 2003.